



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-3000

May 27, 2003

DPAP/P

### MEMORANDUM FOR DEPUTY DIRECTOR, CONTRACT MANAGEMENT DIRECTORATE, DODIG

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS

SUBJECT: Response to DoDIG Draft Report D2001CK-0061, "Administration of  
Performance-Based Payments Made to Defense Contractors"

As requested, I am providing responses to the general content and  
recommendations contained in the subject report.

#### General Content:

It should be emphasized that the findings contained in this report address contract actions that were negotiated prior to: 1) the issuance of FAR guidance on performance-based payments (Federal Register dated March 27, 2000, 65 FR 16282), 2) the AT&L User Guide for Performance Based Payments, and 3) the on-line training course. It is important that the users of this reports understand that OUSD(AT&L) took these significant pro-active actions to address many of the concerns noted in the report. The FAR rule revised the Regulations to emphasize that each performance-based payment should represent what the contractor could reasonably be expected to incur to achieve the payment event rather than resemble an advance payment.

#### Recommendations:

**DoDIG Recommendation #1:** Establish a working group to monitor the effectiveness of expanded performance-based payments implementation through 2005. This team should monitor adherence to policy, recommend policy changes, establish performance measures, and assess the benefits of using performance-based payments.

**DPAP Response: Concur in Principle.** As a follow-up to the attached USD(AT&L) letter of November 13, 2000, DPAP will conduct an assessment of the benefits of expanded performance-based payments implementation. The assessment will address contracting officer compliance with FAR 32.10 performance-based payment policies.



The assessment will also address whether any changes are needed to those policies, to the Performance-Based Payment Users Guide, or to training resources, based upon input obtained from procuring contracting officers, the Defense Contract Management Agency (DCMA), the Defense Contract Audit Agency (DCAA), contractors, and other interested parties.

***DoDIG Recommendation #2:*** Obtain and incorporate comments from procuring contracting officers, the Defense Contract Audit Agency, and the Defense Contract Management Agency on the User's Guide to performance-based payments and implement as mandatory guidance.

***DPAP Response: Concur in Part.*** Comments from procuring contracting officers, the Defense Contract Audit Agency and the Defense Contract Management Agency on the User's Guide will be obtained as part of the assessment discussed in our response to Recommendation #1. However, we do not believe the user's guide should be mandatory. Contracting officers should be provided the necessary tools to perform their responsibilities, coupled with the flexibility to make decisions based on the particular facts and circumstances of each business situation. As an alternative, we propose to amend the User's Guide to remind contracting officers of their responsibility at FAR 15.406-3 to fully document their evaluation of performance based payments, including how they complied with the FAR policies and how they did or did not use the guidance available to them in the User's Guide (including whether they used field input provided by DCMA and/or DCAA).

***DoDIG Recommendation #3:*** Establish procedures requiring the procuring contracting officer to obtain Defense Contract Management Agency and Defense Contract Audit Agency input before finalizing the event description, event prices, and event measurement criteria or to document the justification for not obtaining the input. The procuring contracting officers should also document the justification for not using Defense Contract Management Agency and Defense Contract Audit Agency input.

***DPAP Response: Concur in Principle.*** As part of the assessment discussed in our response to Recommendation #1, DPAP will solicit input as to whether current guidance needs additional emphasis regarding the use of DCMA and/or DCAA input. In addition, as noted in the DPAP response to Recommendation #2, DPAP will amend the User's Guide to remind contracting officers of their responsibility at FAR 15.406-3 to fully document their evaluation of the performance based payments (PBP), including whether they used field input provided by DCMA and/or DCAA.

It is important to note that the User's Guide currently includes guidance for obtaining DCMA and DCAA input. In particular, the use of DCMA and DCAA is

emphasized on Page 13 of the guide, "Utilizing the Government Team":

"In many cases, representatives of DCMA and the Defense Contract Audit Agency (DCAA) will have special familiarity with the program as well as with the contractor's operations and organization. This experience and familiarity can be a valuable asset for the contracting officer and the program office when selecting and defining appropriate PBP events. Also, DCMA on-site representatives are frequently the best resource for verifying event accomplishment during contract performance. **Contracting officers are encouraged to seek the input of DCMA and DCAA representatives and to build in their continuing involvement when negotiating and structuring the contract finance template.**"

If you have any questions regarding this memorandum, please contact my point of contact Mr. David J. Capitano, at 703-847-7486 or at [david.capitano@osd.mil](mailto:david.capitano@osd.mil).



Deidre A. Lee  
Director, Defense Procurement  
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Attachment:  
As stated